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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

POWER REPLACEMENTS, INC.,

Plaintiff and Appellant,

v.

RICHARD KOZACKA,

Defendant and Respondent.

E033042

(Super.Ct.No. 375169)

OPINION

APPEAL from the Superior Court of Riverside County. Joan F. Ettinger,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

R.E. Scott & Associates and R.E. Scott for Plaintiff and Appellant.

Drosman, Abney & Percival and Michael L. Abney for Defendant and
Respondent.

1. Introduction

Power Replacements, Inc., a California corporation, appeals the trial court's order granting the motion to quash of Richard Kozacka (Kozacka) for lack of personal jurisdiction. Power Replacements argues the trial court erred because Kozacka had

sufficient minimum contacts with California based on his execution of a patent license agreement with a forum selection clause and his temporary ownership of Power Replacements stock that he inherited from his son. We disagree and affirm.

2. Factual and Procedural Background

The parties generally agree on some basic facts.

Kozacka's son, Wayne, a California resident, had a one-half ownership interest in Power Replacements and a one-half interest in two "sealing elements" patents. Jack Kaser, also known as Jack Friedberg, owned the other one-half of Power Replacements. Either Kaser or Power Replacements had the other one-half interest in the two patents.

When Wayne Kozacka died in September 1999, his father inherited his interests in Power Replacements and the patents. Kozacka is a Missouri resident.

On May 15, 2002, Power Replacements filed a verified complaint against Kozacka and other defendants. The complaint alleges that Kozacka conspired with the other defendants, including LorMar Enterprises, to take Power Replacements's business property and proprietary business information and to compete unlawfully with Power Replacements.

In July 2002, Kozacka filed a motion to quash service of the summons and complaint, asserting he was 83 years old and had no business dealings in California and no other connections with the state. After he inherited the half-interest in Power Replacements, to avoid any responsibility or liability regarding his interest in the company, he transferred his shares to Kaser, effective as of January 1, 2000. He also

retained his half-interest in the patents to use according to his discretion. He then licensed the patents to LorMar Enterprises in exchange for royalty payments. He denied having been an owner, partner, agent, employee, employer, or joint venturer of or with any of the other defendants. He also denied having possession or use of Power Replacements's business property or proprietary business information.

As evidence in opposition to the motion to quash, Power Replacements relied on the allegations of its complaint, which was verified by information and belief on behalf of the corporation.

The court continued the hearing on the motion to permit Power Replacements to conduct limited discovery on the jurisdictional issue. Power Replacements filed Kozacka's responses to that discovery as further opposition to the motion to quash. Neither below, nor on appeal, has Power Replacements summarized or characterized the contents of that discovery material.

The court granted the motion to quash, ruling that a complaint verified by information and belief did not suffice as evidence in opposition to the motion to quash, and that there was no evidence of minimum contacts to support California jurisdiction over Kozacka.

2. Discussion

Personal jurisdiction in California extends as far as due process will allow. So long as California's exercise of jurisdiction does not violate its own Constitution or that

of the United States, it is permissible.¹ Constitutional due process requires that jurisdiction be exercised only against those who have established minimum contacts with California by which they have purposefully availed themselves of the privilege of conducting activities within this state, thus invoking the benefits and protections of its laws.² Further, the exercise of jurisdiction must not offend “““traditional notions of fair play and substantial justice.””” [Citation.]”³

Certain principles guide our review of an order granting a motion to quash: “Resolution of the question of personal jurisdiction must be accomplished under certain evidentiary rules. First, when jurisdiction is challenged by a nonresident defendant, the burden of proof is upon the plaintiff to demonstrate that ‘minimum contacts’ exist between defendant and the forum state to justify imposition of personal jurisdiction. [Citation.] The plaintiff has the right to conduct discovery with regard to the issue of jurisdiction to develop the facts necessary to sustain this burden. [Citation.] . . . The plaintiff need only present facts demonstrating that the conduct of defendants related to the pleaded causes is such as to constitute constitutionally cognizable ‘minimum contacts.’ [Citation.] [W]here there is conflict between the declarations of the parties, the explicit and implicit resolution thereof by the trial court may not be reevaluated on

¹ *Malone v. Equitas Reinsurance Ltd.* (2000) 84 Cal.App.4th 1430, 1436.

² *Malone v. Equitas Reinsurance Ltd., supra*, 84 Cal.App.4th at pages 1436-1437.

³ *Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576, 591.

appellate review. [Citations.]”⁴ If the facts are not disputed, we review the facts de novo.⁵

Only Kozacka presented a declaration setting forth evidence. Power Replacements did not submit an affidavit or declaration. Instead, Power Replacements tried to rely on the conclusionary allegations of its complaint. A complaint by a corporation may properly be verified on information and belief⁶ and is adequate to require a defendant to verify his answer. But a complaint so verified does not supply the evidentiary facts based on personal knowledge needed to oppose a motion to quash. The mass of discovery documents submitted by Power Replacements also did not supply such evidence. As a preliminary matter, therefore, Power Replacements did not meet its burden of proof to present evidence showing minimum contacts supporting jurisdiction.⁷

Furthermore, as a matter of law, the evidence submitted by Kozacka absolutely belies the existence of him having any minimum contacts with California. Power Replacements argues that Kozacka purposely availed himself of the benefits of activities in California⁸ and should have been held to have submitted to its jurisdiction. But,

⁴ *Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 710.

⁵ *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449.

⁶ Code of Civil Procedure section 446.

⁷ *Evangelize China Fellowship, Inc. v. Evangelize China Fellowship* (1983) 146 Cal.App.3d 440, 444.

⁸ *Vons Companies, Inc. v. Seabest Foods, Inc., supra*, 14 Cal.4th at page 446.

[footnote continued on next page]

according to the competent evidence, Kozacka's only connection with California involved transferring his interest in Power Replacements to Kaser and then leasing his interest in the two patents to LorMar, for which he was paid royalties. These acts did not constitute purposeful deliberate activity in California.⁹ Instead, they were caused by Kozacka inheriting his son's property, divesting himself of interest in Power Replacements, and licensing the patents to LorMar without himself doing any business or performing any significant activity in California.

Power Replacements's additional argument that "purposeful avilment" was demonstrated by Kozacka's allegedly tortious acts in California also fails. Notwithstanding the conclusionary allegations of the complaint, there is no competent evidence of bad acts by Kozacka or knowledge by Kozacka of bad acts by others. Simply giving a patent license to LorMar did not constitute tortious acts.¹⁰

We also reject Power Replacements's argument that the Patent License Agreement created California jurisdiction over Kozacka in the instant lawsuit. The license agreement provides it is governed by California law. But the parties to the license agreement are Kozacka, as licensor, and LorMar, as licensee, not Power Replacements.

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⁹ *Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at pages 446-447; *Malone v. Equitas Reinsurance Ltd.*, *supra*, 84 Cal.App.4th 1430, 1437.

¹⁰ *Dole Food Company, Inc. v. Watts* (9th Cir. 2002) 303 F.3d 1104, 1111, 1114; *Bancroft & Masters, Inc. v. Augusta National, Inc.* (9th Cir. 2000) 223 F.3d 1082, 1087.

Power Replacements has no rights or obligations related to the license. There is simply no support at all for Power Replacements's rather incoherent assertion that the agreement is "in a nutshell, the basis of the agreement between [Kozacka] and his co-defendants which allowed them to perpetrate the offenses against [Power Replacements] which are alleged in the complaint--for without the purported licensing of [Kozacka's] 50% of the patents at issue the 'plan' as it unfolds in the complaint would not have apparently valid [sic]."

Power Replacements cites *Lu v. Dryclean-U.S.A. of California, Inc.*¹¹ for the proposition that a forum selection clause may be enforced by a non-signatory. In that case, plaintiffs brought suit in California against three alter-ego defendants based on a franchise agreement containing a forum selection clause placing jurisdiction in Florida. Defendants moved to dismiss the California case and plaintiffs sought to avoid the clause, arguing two defendants were not signatories to the franchise agreement. The court held the forum selection clause was enforceable against plaintiffs by the non-signing defendants because "the alleged conduct of [defendants] is closely related to the contractual relationship. They are alleged to have participated in the fraudulent representations which induced plaintiffs to enter into the Agreement."¹² Therefore, Florida jurisdiction was proper.

¹¹ *Lu v. Dryclean-U.S.A. of California, Inc.* (1992) 11 Cal.App.4th 1490, 1493-1494.

¹² *Lu v. Dryclean-U.S.A. of California, Inc., supra*, 11 Cal.App.4th at page 1494.

Lu differs from the present case. Power Replacements’s complaint does not seek to enforce the license agreement and is not based on an agreement containing a forum selection clause. The rationale used by the *Lu* court to compel plaintiffs to litigate their contractual dispute against defendants in Florida rather than California cannot logically be employed to allow Power Replacements to sue Kozacka for non-contractual claims in a California court based on the license agreement with LorMar.

3. Disposition

The order quashing service of summons and complaint is affirmed. Kozacka shall recover his costs on appeal.

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s/Gaut
J.

We concur:

s/Hollenhorst
Acting P. J.

s/King
J.